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17 *Attorneys for Plaintiff and the Settlement Class*

18
19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **OAKLAND DIVISION**

22 ALEX PYGIN, an individual and California
23 resident, on behalf of himself and all others
24 similarly situated,

25 Plaintiff,

26 v.

27 BOMBAS, LLC, SHOPIFY (USA) INC., and
28 SHOPIFY, INC.,

Defendants.

Case No.: 4:20-cv-04412-JSW

**PLAINTIFF'S REPLY ISO MOTION
FOR APPROVAL OF ATTORNEYS'
FEES AWARD, EXPENSE
REIMBURSEMENT AND SERVICE
AWARD TO REPRESENTATIVE
PLAINTIFF AND UNOPPOSED
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

DATE: November 19, 2021
TIME: 9:00 a.m.
COURT: 5, 2nd Floor
JUDGE: Hon. Jeffrey S. White

On September 3, 2021, Plaintiff filed the Motion for Approval of Attorneys' Fees Award, Expense Reimbursement, and Service Award to Representative Plaintiff ("Motion for Attorneys' Fees") (ECF No. 52), and on October 15, 2021, Plaintiff filed the Unopposed Motion for Final Approval of Class Action Settlement ("Final Approval Motion") (ECF No. 54). No oppositions have been filed.

The absence of opposition is not surprising. As of November 5, 2021, no one objected to the settlement or opted out (the deadline for Settlement Class Members to request exclusion or object to the Settlement was October 12, 2021). *See* Supplemental Declaration of M. Anderson Berry in Further Support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Unopposed Motion for Approval of Attorneys' Fees Award, Expense Reimbursement, and Service Award to representative Plaintiff ("Supp. Berry Decl."), ¶ 11, filed herewith.

Updated Notice and Claims Information

As detailed in the Final Approval Motion, the settlement is fair, adequate, and reasonable and represents a beneficial resolution of this high-risk, complex litigation, providing substantial monetary benefit to Class Members. Through Class Counsel's efforts, Bombas has created a non-reversionary Settlement Fund of \$225,000.00 to fund : (1) all payments of valid claims submitted by Settlement Class Members; (2) the costs of notice and claims administration; (3) attorneys' fees and costs to be determined by the Court; and (4) Class Representative Plaintiff's Service Award. *See* ECF No. 48-4 (SA), §§ 1.38-40, 2.1.

Since the Final Approval Motion was filed on October 15, 2021, the reaction of the Settlement Class has continued to be overwhelmingly positive. The deadline to object or opt out of the settlement was October 12, 2021; as of November 5, 2021, Angeion has not received any requests for exclusion from the Settlement, nor has it received any objections to the Settlement. Supp. Berry Decl., ¶ 11.

The deadline for Settlement Class Members to submit a Claim Form is November 9, 2021.

1 *Id.* As of the filing of this reply, Angeion has received 9,079 Claim Forms for the Basic Award
 2 (8,948 via online, 131 via mail) and 849 Claim Forms for the Reimbursement Award (843 via
 3 online, 6 via mail). *Id.* Angeion will determine the number of valid claims by approximately
 4 January 15, 2022, because Class Members have until January 8, 2022, to cure any deficiencies.
 5 *Id.*, ¶ 10.

6 As of November 5, 2021, a total of 76 of the initial Postcard Notices mailed were returned
 7 by the USPS as undeliverable without a forwarding address. *Id.*, ¶ 9. The 76 undeliverable notices
 8 were processed through address verifications searches, and of the 76 records subjected to a skip
 9 trace, a new address was located for 51. *Id.* Angeion updated the Class Member database and has
 10 re-mailed Postcard Notices to the 51 class members located via this process; Angeion will
 11 continue to skip trace any notices returned as undeliverable up to the November 9, 2021 deadline.
 12 *Id.*

13 **Updated Fees and Expenses Information**

14 Since filing the Motion for Attorneys' Fees on September 3, 2021, Class Counsel have
 15 spent additional time and incurred additional expenses representing Plaintiff in this action. Class
 16 Counsel have now incurred \$8,066.37 in costs and expenses and a cumulative total of 319.50
 17 hours and \$167,687.90 in lodestar through November 5, 2021. Supp. Berry Decl., ¶¶ 3-5; *see*
 18 Declaration of John A. Yanchunis in Further Support of Plaintiff's Unopposed Motion for
 19 Approval of Attorneys' Fees Award, Expense Reimbursement, and Service Award to
 20 Representative Plaintiff, filed herewith (ECF No. 52.4) ("Yanchunis Decl."), ¶ 12. Plaintiff's
 21 counsel expect they will incur additional time preparing for and attending the fairness hearing
 22 and communicating with defense counsel, the claims administrator, and Class Members regarding
 23 administration of the settlement. Supp. Berry Decl., ¶ 6. The requested fee award of \$56,250
 24 would provide a negative lodestar multiplier of 0.335.

25 As discussed in the Motion for Attorneys' Fees, the quality of the work performed by
 26 Class Counsel and the results achieved support the award of a lodestar multiplier. *See, e.g.,*
 27

1 *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991). This factor weighs in favor of
 2 approving the requested award of attorneys' fees because there is a negative lodestar multiplier.
 3 *See, e.g., Hapka v. Carecentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 U.S. Dist. LEXIS 68186, at
 4 *5 (D. Kan. Feb. 15, 2018) (fee award implicating "a negative multiplier (0.87) on Class
 5 Counsel's lodestar – is inherently reasonable."); *Carlin v. DairyAmerica, Inc.*, No. 1:09-cv-
 6 04300AWI-EPG, 2019 U.S. Dist. LEXIS 78026, at *44 (E.D. Cal. May 8, 2019) (citing *Schiller*
 7 *v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *23 (E.D. Cal. June 11, 2012) for the
 8 proposition that "a negative lodestar multiplier strongly supports the reasonableness of the fee
 9 request"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400 (CM), 2010 U.S. Dist.
 10 LEXIS 119702, at *77 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee
 11 representing a significant discount from their lodestar provides additional support for the
 12 reasonableness of the fee request.").

13 ***

14 For all of the foregoing reasons and for the reasons given in Plaintiff's Final Approval
 15 Motion and Motion for Attorneys' Fees, Plaintiff respectfully requests that the Court finally
 16 approve the settlement and grant their motions.

17 Dated: November 5, 2021

Respectfully submitted,

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A PROFESSIONAL LAW CORP.

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